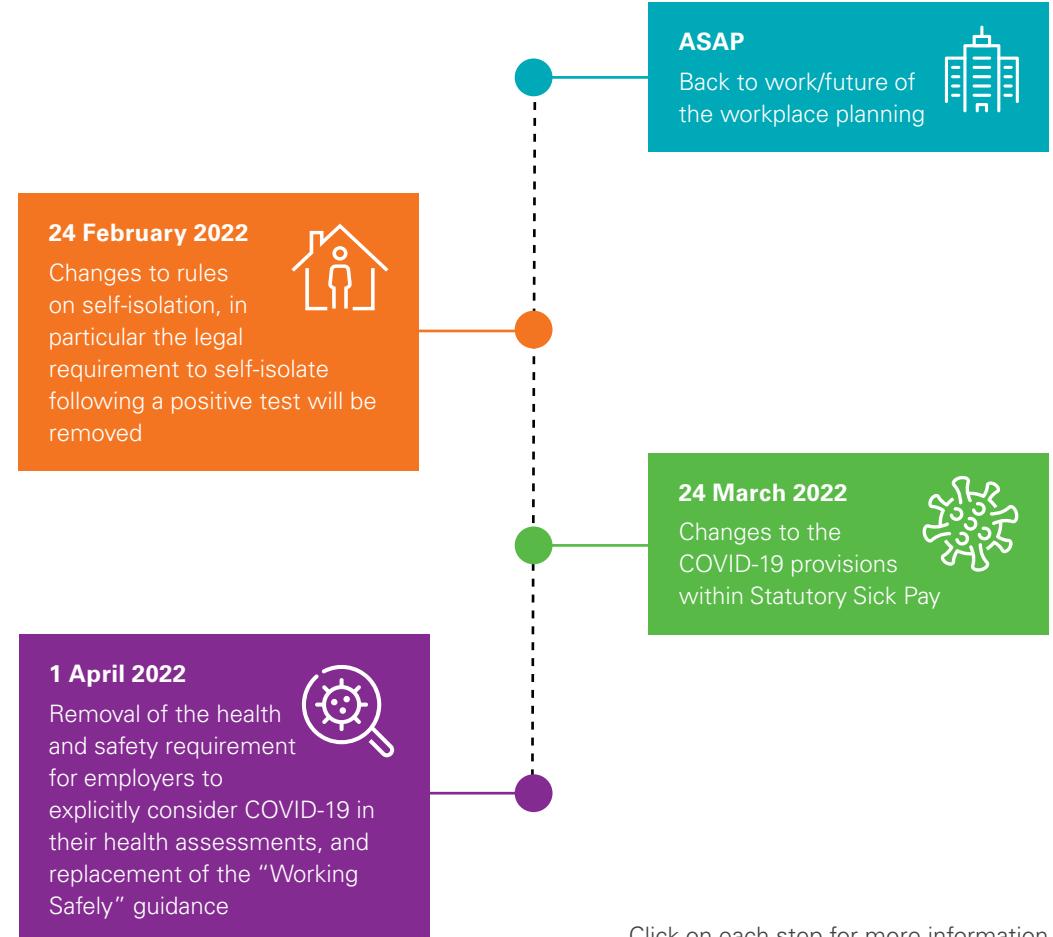


On 21 February, the UK Prime Minister set out the government's plan for "living with COVID-19". This strapline is much less a hostage to fortune than the last Freedom Day, since we all know how that ended.

The government has already lifted the majority of legal restrictions on businesses, but this latest announcement sets out the timescale for also removing the remaining domestic restrictions in England, subject to appropriate parliamentary scrutiny. As has been the case throughout the pandemic, the Devolved Administrations will set out separately how the transition will be managed in Scotland, Wales and Northern Ireland.

To assist employers, we have produced a timeline setting out the key dates for businesses. We have also highlighted key issues for them to consider as we enter this next stage of the pandemic. Let us be clear, the pandemic is not over and there is still a great deal of uncertainty about what the future will bring. The government's aim in this next phase is to enable the country to manage COVID-19 like other respiratory illnesses, while minimising mortality/hospitalisation rates, and retaining the ability to respond if a new variant more dangerous than Omicron emerges or during periods of waning immunity. The medical vs. political debate as to whether this is the right time for all that will no doubt rumble on for years, especially if it turns out that it wasn't.

Please do not forget to join us for our [Employment Law Update Webinar](#) on 8 March 2022, when we will discuss key questions for employers in relation to these latest developments, and keep an eye on our [Employment Law Worldview](#) blog for more detailed insights.



Click on each step for more information

ASAP

The government is no longer asking people to “work from home if they can”. Employers should, therefore, already be communicating with their staff regarding their expectations about returning to the workplace. Now that the guidance has changed, unless an employer has already agreed to remote working (whether part time or full time), an employee’s proper place of work becomes their physical workplace again and remaining away from it requires the employer’s consent. We have already seen a sharp upswing in the number of people requesting flexible working wholly or partly from home and depending on how difficult the employer’s experience of home working has been since March 2020, that consent may be hard to refuse.

So far, we have not seen a mass return to the office (not least because many companies have already recognised the inevitable and introduced hybrid working arrangements that give staff greater flexibility over where they work), but it does seem that staff have been returning to the office in slightly greater numbers than was the case last summer when the instruction to work from home where possible first ended. That may be because Omicron turned out not to be so dangerous as its predecessor or just that people cannot bear being at home any longer, but, either way, it has no impact on any individual’s rights to request flexible working and so that trend may reverse itself in due course.

Inevitably, there will be some who are reluctant to return, whether out of increased concern for their health and safety in light of the government’s latest announcement or simply the fact they would prefer to continue working from home, and employers will need to deal with these individual cases as they arise, regardless of any expectations they may have or guidance they may issue.

24 February 2022

As hinted at in recent weeks, the government is moving more swiftly than was previously expected to remove the legal requirement for individuals to self-isolate following a positive test. This will now be removed from 24 February.

However, adults and children who test positive will continue to be “advised” to stay at home and avoid contact with other people for at least five full days and then continue to follow the guidance until they have received two negative lateral flow tests on consecutive days – assuming they can get hold of one – they are currently out of stock on the government’s website. In other words, employees who test positive for COVID-19 will no longer legally be required to stay at home, but they will still be “advised” to do so, and any sensible employer will direct that they don’t come into work anyway (see below). Nothing can go wrong.

According to the Prime Minister’s statement to Parliament, this will be the position until 1 April, but after that, the government will simply “encourage” people with COVID-19 symptoms to “exercise personal responsibility, just as we encourage people who may have flu to be considerate to others”.

Employees will no longer be under a legal obligation to tell their employer they have tested positive. That does not prevent an employer from asking the question as part of its own precautions, nor from sending home an employee who won’t answer or dismissing an employee who responds untruthfully.

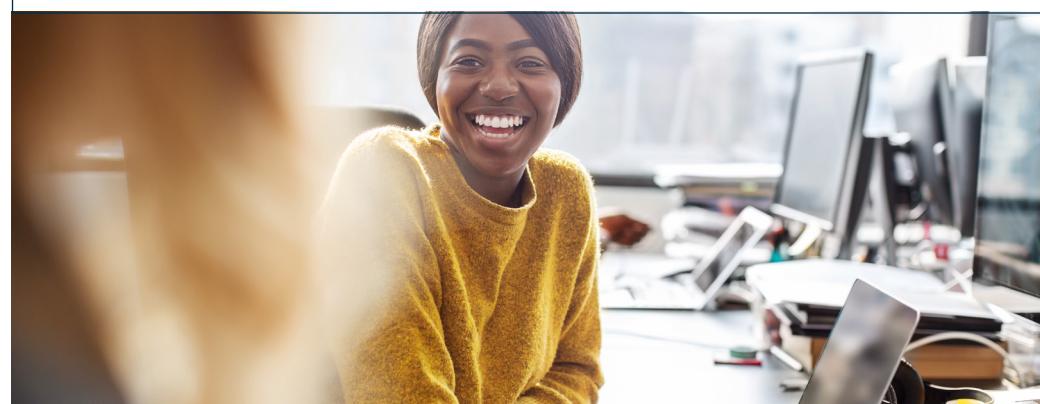
You could, therefore, have a situation where an employee has tested positive for COVID-19 or is displaying COVID-19 symptoms but is allowed to come into the workplace as usual, in the same way as if they had a cold or the flu.

Many employers are likely to feel more than slightly uncomfortable with this change, as, clearly, the virus is still highly contagious and we will not necessarily see the next variant coming in time. They may also start catching flak from other staff and unions who are unhappy about the prospect of infected colleagues swanning into the workplace, especially if they or people they live with have health conditions that make them vulnerable. It will not be possible for an employer to claim its premises to be COVID-19 secure if it allows onsite people it believes or even knows to be carrying a live infection. That may affect its ability to introduce rules around returning to the office and to enforce them by suspension of pay or dismissal for those who refuse.

However, merely because the government allows, it does not mean that the employer has to. We would recommend that employers issue guidance to their staff as to their approach going forward, e.g. whether they will still require staff to stay away from the workplace if they test positive for COVID-19 (spoiler alert – yes, obviously). However, this then raises a number of additional issues, such as your approach to sick pay (see developments highlighted below), the risk of the system of self-reporting being abused, etc. We would see these as relatively minor issues when set against the overriding health and safety imperative (see below).

Routine contact tracing by the government will also come to an end on 24 February. Individuals who have been in close contact with a positive case of COVID-19 will no longer have to test daily for seven days, and the legal requirement for close contacts who are not fully vaccinated to self-isolate will be removed.

The £500 self-isolation support payments will also end on 24 February.



24 March 2022

The government is removing the COVID-19 provisions within the Statutory Sick Pay rules and people will no longer be eligible for Employment and Support Allowance payments from the government because they are self-isolating due to COVID-19 (as there will no longer be any legal obligation to self-isolate). Anyone infected with COVID-19 may, subject to satisfying the conditions of entitlement, still be eligible for Employment and Support Allowance on the basis that they have a health condition or disability that affects their ability to work under the general Employment and Support Allowance regulations.

In terms of SSP, the pre-pandemic rules will apply from 24 March. This means, for example, that SSP will no longer be payable from "day one" even if people are unable to work because they are sick due to COVID-19.

Companies should take a look at their company sick pay rules to see if they need changing in light of these latest developments, as some employers may have changed their approach to the payment of company sick pay during the pandemic. There is nothing in these changes that affects an employer's ability to treat vaccinated staff who still contract COVID-19 more favourably in sick pay terms than the unjabbed population, medical exemptions aside.

Small and medium-sized employers should be aware that the Coronavirus Statutory Sick Pay Rebate Scheme, which allows certain employers to claim back employees' SSP related to COVID-19, will be closed from 17 March. Employers will have until 24 March to submit any new claims for absence periods up to 17 March, or to amend claims they have already submitted.

1 April 2022

From 1 April, the government will remove the health and safety requirement for every employer to consider COVID-19 explicitly in its risk assessments. It will also be replacing the existing set of "Working Safely" guidance with new public health guidance.

As we have said before, the underlying law governing employee health and safety has still not changed and so employers should continue to ensure they comply with their legal obligations. The particular circumstances of your workplace will continue to be the principal determinant of what you need to do about COVID-19. Changes in the government's attitude to the virus and the guidance it issues do not necessarily justify, let alone require, changes to existing employer practice. Employers continue to have a duty to ensure, so far as reasonably practicable, that they do not expose employees and non-employees (customers, contractors, members of the public, etc.) to risks to their health and safety. That is a judgement they must make based on those particular circumstances, but ideally in the knowledge that it is far better to over-react to a health and safety threat to your workforce than to under-react it.

From 1 April, the government will no longer provide free, universal and asymptomatic testing in England, with some limited symptomatic testing available for a small number of at-risk groups and free symptomatic testing for social care staff.

The government will also remove the current guidance on domestic voluntary COVID-19 certification and will no longer recommend that certain venues use the COVID Pass. The NHS app will, however, continue to allow people to indicate their vaccination status for international travel.



Vaccinations/Other Measures

As previously announced, the government has stepped back from requiring workers in the health and social care sector and care homes in England to be fully vaccinated against COVID-19. A public consultation on revoking the relevant regulations concluded on 16 February and the government has said that it will produce its response shortly. Subject to the outcome of the consultation, the regulations will be revoked ahead of 1 April 2022.

Outside the healthcare sector, we are aware of few employers that have gone down the full "no-jab, no-job" route (as distinct from no-jab, no-entry, which is more common). In light of the government's change in approach to mandatory vaccination and the public "mood-music" more generally, that is likely to be an increasingly difficult and controversial approach to adopt. For the time being at least, that is not the case for other less invasive COVID-19 precautions, such as masks, screens, social-distancing, sanitiser, etc., all of which employers may decide to maintain at this stage as reasonably practicable measures to reduce the health and safety risks in the workplace.

Having said that, as the government makes clear in its "Living with COVID-19" document, vaccination underpins the government's strategy for living with COVID-19 and the country's ability to live with the virus in the future will continue to depend on deeper and broader population immunity covered by vaccines. The vaccine question has, therefore, not gone away entirely.

International Travel

The government is committed to seeing a return to unrestricted global travel and, last month, announced its new system for international travel. As of 11 February, you do not need to take any COVID-19 travel tests or self-isolate on arrival in England if you qualify as fully vaccinated. Travellers who do not qualify as eligible vaccinated need to take a pre-departure test and an arrival test on or before day two, but no longer need to isolate or take a day eight test.

Employers do need to keep in mind that nothing the UK may do in terms of de-restricting returners from overseas travel will have the slightest impact on what measures other countries choose to impose. Indeed, it is possible that the UK's newly relaxed domestic stance will lead other countries to stiffen their tests and quarantine requirements for travellers from the UK. It is, therefore, necessary to ensure that any members of your staff required to travel on business can comply with the rules at their destination.

Further details of the government's future approach will be announced before Easter.

The timeline is intended to be a general overview only and should not be regarded as a substitute for legal advice. It sets out the position as at 23 February 2022.

If you have any questions about the government's proposals, please speak to your usual contact in the Labour & Employment team.

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